In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1117

E. ARTHUR BARROWS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–7) is reported at 404 F. 2d 749.

JURISDICTION

The judgment of the court of appeals was entered on December 20, 1968, and a timely petition for rehearing was denied on January 28, 1969. The petition for a writ of certiorari was filed on March 6, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court properly issued an injunction preventing permanent alteration of a tract

of public domain pending final disposition of an administrative proceeding to determine the validity of petitioners' mining claim.

STATEMENT

Petitioners have been operating a sand and gravel plant on a mining claim in the San Bernardino National Forest, California. Subsequent to institution of administrative contest proceedings, the United States filed an action in the district court seeking to enjoin further operation of the claim pending the outcome of those proceedings. The district court temporarily restrained petitioners from removing materials in excess of the amount of seasonal redepositing. The court below unanimously upheld this order.

In 1953, petitioners, E. Arthur Barrows and Esther Barrows, posted and filed a location notice, later amended, whereby they purported to locate a mining claim for sand and gravel in Grout Creek, a seasonal stream emptying into Big Bear Lake in the San Bernardino National Forest. In 1960, the Barrows leased the claim to Seaman and his company, Big Bear Rock and Materials Company. The company, with others, has since operated a large commercial sand and gravel mining and processing plant on the claim.

In 1964, the Forest Service initiated an administrative proceeding in the local land office of the Bureau of Land Management to contest the validity of the claim for lack of timely discovery of a valuable deposit prior to July 23, 1955, the effective date of the Common Varieties Act, 30 U.S.C. 611. That Act pre-

cluded any further location of claims for certain common varieties of minerals, including sand and gravel. On March 14, 1966, the Hearing Examiner declared the mining claim to be null and void for lack of a timely discovery. The contestees in that proceeding, who include some of the petitioners, timely appealed from this decision to the Director of the Bureau of Land Management, who upheld the decision on June 28, 1968. The matter is now pending before the Secretary of the Interior.

On June 8, 1967, the United States commenced this action for injunctive and other relief. After extensive proceedings, the district court found that the petitioners' removal of vast quantities of materials from the claim was working an irreparable injury to the interests of the United States. The court concluded that a temporary injunction should issue which would allow petitioners to continue to operate on the claim pending administrative determination of the validity of the claim, on the condition that they would remove no more than "such amounts of sand, gravel and surface materials from the subject area as are normally replenished seasonally."[1] The court of appeals affirmed.

ARGUMENT

The courts below correctly concluded that the district court had jurisdiction to protect the interests of the government as the underlying property owner

[1] The district court derived the terms of the condition from the position the petitioners had consistently maintained, *i.e.*, that the United States would suffer no irreparable injury due to the mining of the claim because the excavations would be filled in by seasonal depositing during each year.

while the validity of petitioners' mining claim was being adjudicated in Department of the Interior proceedings, and that this temporary injunction regulating the use of the claim was a proper exercise of that jurisdiction. This proceeding in the district court was the only remedy available to the United States to prevent damage to the public domain pending adjudication of the mining claim, since the Department of the Interior is not empowered to grant such temporary relief pending its determination of the validity of asserted mining claims.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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